IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 468 of 2006

Chandrakant Jasvantrai Raval & Anr. .. Petitioners

versus

Bhagwandas Verhomal Jethwani & ors. .. Respondents

...

Mr.S.C. Naidu with Ms.Saloni M. Desai for the petitioners.

Mr.T.N.Subramanian with Mr.K.J.Munshi i/b M/s.Thakore Jariwala & Associates for the respondents.

CORAM : D.G. KARNIK,J.

DATED : 21st February 2007

P.C.:

1. Heard the counsel.

2. By this petition under section 9 of the Arbitration & Conciliation Act 1996 (for short "the

Arbitration Act") the petitioners seek an interim relief by way of appointment of a receiver of the partnership assets and also an injunction restraining the respondents from alienating the partnership assets.

3. The petitioners and respondents became the partners of a firm known as "M/s.Rado Construction Co." (for short "the said firm") in the year 1994. The petitioners contend that since 1994 till the date of presentation of the petition, they continue to be the partners of the said firm and the respondents are trying to deal with the assets and properties of the partnership without their knowledge and consent and to their exclusion. They have therefore invoked an arbitration as per the arbitration clause contained the partnership deed dated 25th May 1994. By this petition they claim interim reliefs pending the appointment of arbitrators and their award.

4. The respondents, by filing an affidavit in reply have contended that the petitioners have retired from the partnership firm. A xerox copy of the deed of retirement dated 31st August 1997 as also a copy of the intimation given to the Registrar of

Firms regarding the retirement of the petitioners is annexed to the affidavit. The deed of retirement bears the signatures of the present petitioners. The intimation sent to the Registrar of firms about the retirement of the petitioners also bears their signatures. It is thus clear that the petitioners have ceased to be the partners of the said firm.

5. Learned counsel for the petitioner submitted that signatures of the petitioner were obtained on some blank papers and they appear to have been misused to prepare deed of retirement and intimation to the Registrar of firms. I see no force in the said contention. The intimation sent to the Registrar of firms about the retirement of the petitioners is on a printed form. The title of the said firm bears a printed title "**Notice of change of constitution or dissolution of the firm"**. Thus even assuming that the form was not filled in before the petitioners signed the same, the form clearly indicated that the petitioners were signing the form about the dissolution or reconstitution of the firm. That apart, the signatures on the form were before a notary public. I am therefore unable to accept that the petitioners continue to be the partners of the

said firm.

6. Learned counsel for the respondents invited my attention to the affidavit dated 5th November 2001 filed by the petitioner no.1 in this court in Chamber Summons no.760 of 2001. In paragraph no.5 thereof the petitioner no.1 has clearly stated that he and his wife (i.e. petitioner no.2) had resigned from the said firm in or about the year 1997. Thus the petitioners made a solemn statement before this court in another proceedings that they have retired from the said firm. It was obligatory on the petitioners to disclose to this court that they had previously filed an affidavit in this court wherein they had affirmed that they had retired from the partnership firm. This suppression also disentitles them from getting a relief.

7. For these reasons, the petition is dismissed.

D.G. KARNIK, J